IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

MFA.No. 1371 of 2000()

OPMV.899/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
.....

APPELLANT - PETITIONER:

SANTHOSH, S/O. VASU, KALLASSERY HOUSE, IRUTTUKANNAN, ANAVIRATTY P.O., ADMIMALY, IDUKKI DISTRICT.

BY ADV. SRI.S.GOPAKUMARAN NAIR
SRI.SOORAJ ELANJICKAL

RESPONDENTS :
----

1. **SABU, S/O. RAMAN, URAMBACKAL HOUSE, NEAR POWER HOUSE, CHITHIRAPURAM,] KUNJITHANNI P.O., ADMIMALI (VIA)**

2. **T.P. VINCENT, S/O.PETER, THERAKAPPARAMBIL HOUSE, POTTENKAVU P.O., IDUKKI DISTRICT.**

3. **ORIENTAL INSURANCE CO. LTD., ELENGICAL PLAZA, KOTHAMANGALAM.**

BY ADV. SRI.P.CHANDY JOSEPH
SRI.P.V.JYOTHI PRASAD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15.3.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO. 1371 OF 2000

==========

Dated this the 15th day of March, 2007

J U D G M E N T

The petitioner in O.P(MV) No.899 of 1996 on the file of the Motor Accidents Claims Tribunal, Thodupuzha, is the appellant. The appellant has filed this appeal challenging the inadequacy of the compensation awarded by the Tribunal and also that part of the award by which the insurer was exonerated from the liability.

2. Petitioner was riding a bicycle at about 6.00 p.m. on 11.9.1995. At that time a jeep bearing Reg. No.KL-5/2124 driven by the first respondent hit against the cycle of the petitioner causing injuries to him. According to the petitioner, the driver was driving the vehicle in a rash or negligent manner and because of rash driving of the vehicle, the accident occurred. He filed the petition claiming a sum of Rs.25,000/- as compensation under various heads. The owner and driver did not contest the matter, but the insurer alone contested. It is admitted by the insurer that the vehicle in question was covered by a

certificate of insurance issued by it on the date of the accident. But it was contended that the name of the insured as per the certificate of insurance is T.P.Vincent, who is impleaded as the second respondent in this case. It was also contended that he sold the vehicle to one Mr.O.R. Babu, who in turn sold the vehicle to the first respondent. It was further contended that since the certificate of insurance was obtained after the transfer of the vehicle in the name of the previous owner, there was suppression of material facts and hence the policy is void under Section 149 (2)(b) of the Motor Vehicles Act. The Tribunal found that the accident occurred due to the rash or negligent driving of the vehicle by the driver and the petitioner is entitled to get a compensation of Rs.14,450/-. But it was held that the insurer is not liable to pay the amount as there was violation of policy conditions. For that proposition, the Tribunal relied on the decision reported in **Swaminathan v. Jayalakshmi Amma** (1987 (2) KLT 292). The Tribunal also considered a decision reported in **United India Ins. Co. Ltd. v. Annamma Sebastian** (1999 (3) KLT 541), but distinguished the same on

facts. I do not find any reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the vehicle.

3. Learned counsel for the appellant has argued that prior to the amendment of the Motor Vehicles Act if the policy was not transferred, the insurance company can raise a contention that it is not liable. After the amendment in 1988, there is an automatic transfer of the policy at the time of sale and as such the failure to inform about the transfer to the insurer will not exonerate it from liability. In this case, there is a vital distinction. Originally one T.P. Vincent was the owner. He sold the vehicle and the same was purchased by the first respondent. It is seen that after the purchase of the vehicle by the first respondent, certificate of insurance was issued in the name of the previous owner. It is not a case where the person after obtaining the policy transferred it to another person. But it is a case where the policy was issued to a person, who had no title or possession of the vehicle. The Insurance Company cannot be allowed to contend that there is suppression of material facts.

The RC book is the basic document relating to the ownership of the vehicle. It is true that the vehicle being a movable one can be sold under the Sale of Goos Act. So when a policy is issued to a vehicle, the insurer had a duty to verify the particulars. Had it verified the RC Book it could have been easily found that the original owner transferred the vehicle. It is also to be noted that by taking a policy in the name of a person who already transferred the vehicle long back the RC owner will not get any benefit but he is taking a great risk. Unless there is a valid policy of insurance, the insurer cannot be compelled to pay the compensation. It appears that the name of T.P. Vincent was written in the policy due to an inadvertent omission either on the part of the company or on the part of the first respondent. So the contention of the insurer that there is suppression of material facts cannot be accepted. The vehicle was covered with a valid policy and the vehicle was using by the first respondent. A reading of Section 146 of the Act shows that certificate of insurance can be given not only to owner but any person authorised to use the same. Since it is a mistake, I am of the

view that the finding of the Tribunal that the insurer is not liable is unsustainable and liable to be set aside.

In the result, the appeal is allowed in part. That part of the award by which the insurer is exonerated from liability is set aside. Compensation awarded with interest shall be paid by the insurer to the appellant.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO. 1371 OF 2000

==========

J U D G M E N T

15TH MARCH, 2007